

*** CURRENT THROUGH THE 2012 REGULAR SESSION ***

Title 39 Criminal Offenses
Chapter 17 Offenses Against Public Health, Safety and Welfare
Part 4 Drugs

Tenn. Code Ann. § 39-17-453 (2012)

39-17-453. Imitation controlled substances.

(a) It is an offense to knowingly manufacture, deliver, sell, or possess with the intent to sell, deliver or manufacture an imitation controlled substance.

(b) No person shall, for the purpose of causing a condition of intoxication, inebriation, elation, dizziness, excitement, stupefaction, paralysis, or the dulling of the brain or nervous system, or disturbing or distorting of the audio or visual processes, intentionally smell, inhale, inject, ingest or consume in any manner whatsoever an imitation controlled substance.

(c) No person shall, for the purpose of violating subsection (b), use, or possess for the purpose of so using, an imitation controlled substance.

(d) For purposes of this section, "imitation controlled substance" means a pill, capsule, tablet, or substance in any form whatsoever:

(1) Which is not a controlled substance enumerated in this part, which is subject to abuse, and which by express or implied representations, purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States food and drug administration; and

(2) The chemical structure of which is a derivative of, or substantially similar to, the chemical structure of a controlled substance.

(e) (1) In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an imitation controlled substance, there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

(2) In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, it may be inferred from, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell. Such inference shall be transmitted to the jury by the trial judge's charge.

(f) (1) A violation of subsection (a) is a Class E felony. In addition to any period of incarceration imposed, there shall be imposed a fine of not less than two thousand dollars (\$2,000) and not more than five thousand dollars (\$5,000).

(2) A violation of subsection (b) or (c) is a Class A misdemeanor. In addition to any period of incarceration imposed, there shall be imposed a fine of not less than two hundred fifty dollars (\$250) and not more than two thousand five hundred dollars (\$2,500).

(g) The building and premises of any business in or upon which a violation of this section is committed by an employee, agent or owner of such business is declared to be a public nuisance and shall be subject to abatement as provided in title 29, chapter 3.

HISTORY: Acts 2012, ch. 843, § 1.

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Tenn. Code Ann. § 39-17-454

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Title 39 Criminal Offenses
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Tenn. Code Ann. § 39-17-454 (2012)

39-17-454. Controlled substance analogues.

(a) (1) As used in this section, "controlled substance analogue" means a capsule, pill, powder, product or other substance, however constituted:

(A) That has the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance; and

(B) The chemical structure of which is a derivative of, or substantially similar to, the chemical structure of a controlled substance; or

(C) That is prohibited by § 39-17-452.

(2) "Controlled substance analogue" does not include:

(A) A controlled substance;

(B) Any substance for which there is an approved use or new drug application by the federal food and drug administration;

(C) Any compound, mixture, or preparation that contains any controlled substance that is not for

administration to a human being or animal, and that is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

(D) Any substance to which an investigational exemption applies under § 505 of the Food, Drug and Cosmetic Act, codified in 21 U.S.C. § 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

(b) (1) In determining whether a substance is a controlled substance analogue, the following factors shall be considered, along with any other relevant factors:

(A) The difference between the price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

(B) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;

(C) The defendant's prior convictions, if any, for a violation of any state or federal statute prohibiting controlled substances or controlled substance analogues; and

(D) Comparisons with accepted methods of marketing a legitimate nonprescription drug for medicinal purposes rather than for the purpose of drug abuse or any similar nonmedical use, including:

(i) The packaging of the substance and its appearance in overall finished dosage form;

(ii) Oral or written statements or representations concerning the substance;

(iii) The methods by which the substance is distributed; and

(iv) The manner in which the substance is sold to the public.

(2) In determining whether a substance is a controlled substance analogue, the following scientific or pharmacological factors may be considered, along with any other relevant factors:

(A) Its actual or relative potential for abuse;

(B) Scientific evidence of its pharmacological effect, if known;

(C) The state of current scientific knowledge regarding the substance;

(D) The history of the substance and its current pattern of abuse;

(E) The scope, duration and significance of abuse;

(F) What, if any, risk there is to the public health;

(G) Its psychic or physiological dependence liability; and

(H) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(c) It is an offense to knowingly manufacture, deliver, dispense or sell a controlled substance analogue or to possess a controlled substance analogue with the intent to manufacture, deliver, dispense or sell such substance.

(d) It is an offense to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one (1) gram.

(e) It may be inferred from the amount of controlled substance analogue possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance analogue was possessed with the purpose of selling or otherwise dispensing in violation of subsection (c). It may be inferred from circumstances indicating a casual exchange among individuals of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing in violation of subsection (c). The inferences shall be transmitted to the jury by the trial judge's charge, and the jury will consider the inferences along with the nature of the substance possessed when affixing the penalty.

(f) (1) It is an offense for a person to represent, orally or in writing, advertise, infer or intend that a controlled substance analogue:

(A) Is a derivative of, or substantially similar to, the chemical structure of a controlled substance;

(B) Has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance;

(C) Is a substance listed in § 39-17-452.

(2) It is not a defense to prosecution under this subsection (f) that the controlled substance analogue:

(A) Is not a derivative of a controlled substance;

(B) Does not have a chemical structure that is substantially similar to that of a controlled substance;

(C) Does not have a stimulant, depressant, hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance; or

(D) Is not listed in § 39-17-452.

(g) (1) A first violation of subsection (c) is a Class D felony.

(2) A second or subsequent violation of subsection (c) is a Class C felony.

(3) If the violation of subsection (c) involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection (g) for delivering, dispensing or selling to an adult.

(4) A violation of subsection (d) or (f) is a Class A misdemeanor.

(h) (1) Nothing in this section shall preclude a violation of § 39-17-453, involving an imitation controlled substance, or § 39-17-452 from being prosecuted and punished as a violation of this section if the substance in question meets the definition of an analogue controlled substance under subsection (a).

(2) Nothing in this section shall preclude a violation of this section involving a controlled substance analogue from being prosecuted and punished under § 39-17-452 or § 39-17-453 if the controlled substance analogue in question also meets the definitions found in such sections.

(i) Any disability, disqualification, forfeiture, suspension, revocation, prohibition, tax or other adverse consequence provided by law that may result from a conviction for an offense involving a controlled substance shall also apply if the conviction involves a controlled substance analogue in violation of subsection (c).

(j) The building and premises of any business in or upon which a violation of subsection (c) or (f) is

committed by an employee, agent or owner of such business is declared to be a public nuisance and shall be subject to abatement as provided in title 29, chapter 3.

HISTORY: Acts 2012, ch. 848, § 96.

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